UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1623/Add.1
27 October 1997

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Sixty-first session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 1623rd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 23 October 1997, at 4.15 p.m.

Chairperson: Ms. CHANET

later: Mr. BHAGWATI

later: Ms. CHANET

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* The summary record of the first part (closed) of the meeting appears as document CCPR/C/SR.1623.

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The public part of the meeting was called to order at 4.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Jamaica (continued) (CCPR/C/42/Add.15; HRI/CORE/1/Add.82; CCPR/C/61/JAM/4)

1. At the invitation of the Chairperson, the members of the delegation of Jamaica took places at the Committee table.

2. The CHAIRPERSON said she wished to respond, on behalf of the Committee, to the announcement made at the preceding meeting that Jamaica would address to the Secretary-General of the United Nations, that very day, a communication conveying its decision to denounce the Optional Protocol. The head of the Jamaican delegation himself had acknowledged that it was a sad day, and she could only agree: sad for human rights, for Jamaica, for the community of nations that adhered to the Covenant and for the Committee, which deeply regretted that the decision had been taken and considered it a step in the wrong direction. Since the Government had decided to use its prerogative under article 12 of the Optional Protocol to denounce the Protocol, it was no doubt aware of the terms of paragraph 2 of that article, which read: "Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation." Since the denunciation was being made that day, the effective date would be 23 January 1998. In the interim, it should be possible to chart a new course, to find a way of restoring the bonds that were being loosened and perhaps even reversing the decision. At all events, such were the Committee's desires for the future of its relations with the Government of Jamaica.

3. She invited members of the Committee to ask additional questions concerning the replies given by the Jamaican delegation to part I of the list of issues (CCPR/C/61/JAM/4).

4. Lord COLVILLE welcomed the Jamaican delegation to a discussion that took on special importance since there had been no such opportunity for dialogue in the past 16 years.

5. In answering question 1, the delegation had referred to legislation on domestic violence that had recently entered into force. It might be useful to compare that legislation with part 4 of the Family Law Act of 1996 adopted by the United Kingdom, which dealt with many of the same issues. Comparative law could often be helpful in the development of new court procedures and remedies.

6. In connection with question 3, he wished to know whether there were lay members of the Police Complaints Authority - people with no link to the police force or legal machinery and who acted as members of the public during the Authority's deliberations. Did the Authority publish annual reports that could be consulted by the public? If it did not, it should, since that

promoted public confidence in police procedures. Useful statistics had been provided on the cases considered by the Authority, but no indication had been given of the results of those deliberations.

7. He commended the ambitions of the new Commissioner of Corrections regarding the prison service and prison-building programme, for prisoners had endured appalling conditions in the past. The Commissioner had referred to the need to motivate staff properly, and that did indeed seem to be necessary. In March 1997, after a grave incident at the St. Catherine Adult Correctional Centre, he had issued orders for strict adherence to the directives on items which prisoners were entitled to have in their possession. Writing paper and materials were included, but correspondence was not. Yet if a prisoner was to avail himself of the appellate process, he needed to correspond with his lawyer and consult the transcript of his file. What facilities for private consultations with their lawyers were available for prisoners who wished to appeal against their sentences?

8. Mr. LALLAH thanked the Jamaican delegation for its introductory statement and expressed regret that it had taken 16 years for the report to be submitted. He agreed with Ms. Medina Quiroga's observations about discriminatory provisions in the Constitution, particularly section 4 (1), (3) and (7), which clearly affected the situation of Jamaican women who married foreigners. Such provisions should be scrutinized carefully in the context of constitutional reform; the Committee had jurisprudence that could be of use to Jamaica in that connection, notably the case of Aumeeruddy-Cziffra v. Mauritius.

9. In the information given about efforts to shorten judicial proceedings, no mention had been made of the right of appeal to the Privy Council, which was a fairly lengthy process. In the case of de Boucherville v. the Queen, for example, it had taken about seven years for the appeal to be heard. It might be useful to inquire into what could be done to speed up the procedure.

10. He wholly disagreed with the arguments advanced concerning Jamaican law on flogging. To say that there was no universally applied policy on flogging was not sound reasoning. The fact that some States still applied radical forms of corporal punishment did not mean that such conduct was not widely disapproved of and deemed to be at variance with the Covenant. Jamaica should seriously consider abolishing the Flogging Act, particularly since section 17 (2) of the Constitution legitimized such antiquated legislation.

11. Mr. BHAGWATI welcomed the delegation to the meeting, which was intended to further the dialogue begun long before but interrupted for an unduly long period owing to the delay in submission of the second periodic report. He was considerably distressed by the decision taken by the Government of Jamaica to withdraw from the Optional Protocol; he hoped that during the three-month period provided for under article 12, paragraph 2, of the Protocol, steps would be taken by Jamaica to reconsider that decision.

12. Section 155 (2) of the 1991 Correctional Institutional Rules provided that prisoners could be required to work for private individuals or companies. Did they do so on the basis of a freely accepted employment relationship, or were they compelled to work? Was their consent obtained in writing

beforehand? According to an ILO Committee of Experts, there was veiled discrimination between men and women in the 1989 Minimum Wage Printing Trade Order. Had anything been done to remedy that state of affairs? Differential treatment of male and female teachers in regard to marriage allowances had been observed in the past. Was that still the case? Under the new legal aid bill passed by the House of Representatives but pending in the Senate, provision should clearly be made for legal aid in constitutional actions as well as civil cases.

13. When a life sentence was imposed, how long was the detainee actually kept in prison? Was he or she eligible for parole after a certain period? The Coroners Act required an inquest in every case of unnatural death. Sixteen people had been killed in the prison riots of August 1997. Had inquests been held then, and in other instances when persons had died as a result of police firing? If so, what had the results been? When an accused person was brought before a magistrate, was he or she asked whether he or she had been subjected to ill-treatment? Were lock-ups visited by independent persons?

14. The delegation had referred to a report by the Constitutional Commission that had been accepted by the Government. Was there any intention to amend the constitutional provisions on forms of corporal punishment such as flogging and whipping?

15. Mr. KLEIN recalled that the head of the Jamaican delegation had rightly stated that universal rules on human rights protection offered minimum standards for such protection. That observation led to the conclusion that where there was minimum compliance with such universal rules, to which the Covenant pertained, the situation was all the more serious. He wished to refer to the situation on death row in that context. According to reports before the Committee, conditions were dreadful: minimal sanitation, lack of medical care, deprivation of water, beatings, intimidation and mock executions and very small cells (6 x 9 ft.). Individuals on death row had received a sentence of death - not of humiliating and degrading treatment. The penalty inflicted on them by such treatment went beyond the penalty imposed by the court, raising questions of nulla poena sine lege. There was no alternative but to conclude that such conditions amounted to a violation of article 7 of the Covenant. Though the delegation had announced future improvements, the report covered a period in which death-row conditions constituted a cause for serious concern. He would like to hear the delegation's reactions on that point.

16. It was hard to believe that the Flogging Regulation Act of 1903 and the Crime Prevention Act of 1942 were still in force. The fact that some States still used flogging and whipping as a punishment was not an excuse for continued application by other States of such mediaeval practices. True, the development of a human rights culture did not happen overnight, but the very antiquity of the legislation he had cited should prompt the Government to repeal it.

17. He entirely disagreed with the argument advanced at the previous meeting that someone who committed a heinous crime such as rape thereby destroyed his own human dignity. The concept might be defensible from the moral point of view but was totally unacceptable in the context of law.

18. Referring once more to the Flogging Regulation Act of 1903, he noted that under section 4 of the Act flogging could be imposed as a disciplinary punishment. What was the lawful authority that could impose such a punishment on a prisoner? And in what circumstances was it used?

19. Mr. PRADO VALLEJO expressed great regret at Jamaica's decision to withdraw from the Optional Protocol. The decision would have a serious impact on the international community and, more specifically, on the Inter-American Commission. He hoped that the Jamaican Government might be persuaded to reconsider its stand.

20. Turning to the second periodic report (CCPR/C/42/Add.15), he noted that it contained much useful information about Jamaica's laws but said nothing about any difficulties the country might be encountering in complying with the Covenant. He wondered whether, in line with what was an almost universal trend in the Americas, the Government of Jamaica had at any point considered abolishing the death penalty.

21. The central problem revealed by the many communications the Committee had received from Jamaican citizens was lack of due process. That situation would have to be changed whether or not Jamaica withdrew from the Optional Protocol. The domestic law must be brought into line with the provisions of article 14 of the Covenant. Lack of legal assistance under paragraph 3 (d) of that article was another major problem which needed to be looked at.

22. Individual communications received by the Committee, as well as reports from other sources, brought to light an excessive use of force by Jamaican security forces. In 1996 alone, 140 citizens had died at the hands of the police. What was the Government doing to prevent such abuses in the future? Were the guilty being punished? Was anything being done to curb abuses by prison guards? Lastly, he asked whether there was any prospect of change in the laws on corporal punishment, which were clearly inconsistent with article 7 of the Covenant.

23. Mr. Bhagwati took the Chair.

24. The CHAIRPERSON informed the Committee that the Jamaican delegation was proposing to leave Geneva that evening and would be unable to attend the next day's meetings. In view of that fact, members might wish to reduce their comments and questions to a minimum.

25. Mr. LALLAH said that he believed members should do their duty in accordance with normal practice. Every effort should of course be made to complete the consideration of the Jamaican report before the end of the meeting, but if that did not prove possible, either the Jamaican delegation might change its plans or the matter could be adjourned until the Committee's next session in New York.

26. Mr. EL SHAFEI drew attention to paragraph 38 of the core document on Jamaica (HRI/CORE/1/Add.82), according to which no legislation implementing the Covenant had been enacted. That situation was no doubt responsible for a number of discrepancies between Jamaica's domestic law and the Covenant, as evidenced by, for example, paragraphs 42 and 69 of the report (CCPR/C/42/Add.15). Even where no difficulties arose in practice, it was surely desirable that legislation implementing the Covenant should be included in Jamaica's future legislation programme. In that connection, he also drew attention to paragraph 24 of the report, according to which the Constitution allowed derogation from the right to freedom from discrimination during a state of emergency. Did that mean that discrimination could be practised during a state of emergency, and if so, on what grounds?

27. Turning to the question of prison labour, he asked for further information about the system in force. Did correctional or forced labour exist as a form of punishment? Were detainees compensated for their work? What type of labour were prisoners required to perform? Were pre-trial detainees put in corrective labour camps? What type of health and safety protection was provided?

28. A further series of questions he wished to raise related to the admissibility of evidence obtained through coercion. What was the maximum period of custody for questioning? Was evidence obtained through illegal interrogation admissible? What rules or safeguards were there to prohibit the admissibility of such evidence? Were accused detainees examined by a doctor before or after interrogation? How was the validity of confessions ascertained? In conclusion, he associated himself with previous speakers in deploring the Jamaican Government's decision to withdraw from the Optional Protocol and the fact that the Committee had been apprised of that decision at such a late stage.

29. Ms. EVATT also deplored Jamaica's decision, which had made the day a bleak one for human rights.

30. In referring to the incident at the Tivoli Gardens in which a child and three women had been killed by members of the security forces, the head of the Jamaican delegation had spoken of an inquiry that had been held. She wondered whether a report on the incident, which was only one of dozens of others resulting in many deaths every year, had been or was to be published. Was there not a requirement for a public inquiry into every such case under section 11 of the Coroners Act? The information provided on the activities of the Police Complaints Authority was welcome, but how many direct inquiries were undertaken by that Authority? In what kind of cases were such inquiries undertaken? And what was their outcome? Were the hearings public and were reports released to the victims? Was any realistic recourse open to victims of violence by prison warders? Was anything done to protect them from reprisals if they complained of ill-treatment? In that connection, she remarked upon the appalling conditions prevailing in Jamaican prisons and joined with previous speakers in insisting that the State was not entitled to keep people in custody unless it could provide them with decent conditions and edible food.

31. The head of the delegation had said that a prisoner appealing against his sentence had the right of attendance at the appeal proceedings. The Committee had received many complaints from prisoners in that respect. What right did convicted persons have to be informed about material submitted in connection with their request for pardon? And could they comment on such material?

32. Another area of great concern was that of legal assistance. Complaints had been received that an accused person had no time to discuss the case with his lawyer and that the lawyer had no means of bringing witnesses to court and was ultimately unable to make proper submissions to the court of appeal. Were there any plans to review the legal aid system so as to overcome those problems? The information in paragraph 140 of the report that the number of cases brought before the Supreme Court in connection with alleged violations of constitutional rights had increased was very welcome, but how could people bring such cases if there was no legal aid?

33. In conclusion, she expressed the hope that Jamaica would refrain from executing anyone whom the Committee subsequently found to have been denied a fair trial or to have been otherwise unfairly condemned. To execute them would be a clear repudiation of Jamaica's international obligations.

34. Ms. Chanet resumed the Chair.

35. Mr. YALDEN, referring to question 1 of the list of issues, asked for clarification of section 24 (5) of the Constitution, which he found difficult to understand in the light of subsection (1) of the same section. In connection with the same question, he noted that the head of the Jamaican delegation had spoken of "equal pay for equal work", whereas the terminology used in ILO Convention No. 100 was "equal pay for work of equal value". The two concepts were not identical and further clarification would be welcome.

36. In providing valuable information in reply to question 3, the representative of Jamaica had omitted to refer to the activities of the Parliamentary Ombudsman. How many complaints had the Ombudsman received and what had he done about them? Did he have jurisdiction not only over matters involving prisoners, but also with respect to human rights issues generally? In order to save time, he was prepared to receive the answers to those questions in writing and would of course pass them on to other members.

37. Expressing agreement with Mr. Klein on the issue of corporal punishment in general, he asked how the provision in the Flogging Regulation Act to the effect that flogging could be used as a punishment for breach of prison regulations was consistent with rule 31 of the Standard Minimum Rules for the Treatment of Prisoners, which completely prohibited corporal punishment for disciplinary offences.

38. Mr. BUERGENTHAL, associating himself with the welcome extended to the Jamaican delegation, said that he particularly looked forward to hearing its comment on the subject of the horrendous conditions in Jamaican prisons. Had any action been taken in connection with the Committee's decisions under the

Optional Protocol with reference to those conditions and to abuses of prisoners' rights by prison authorities? Had any persons responsible for such offences been dismissed?

39. Like previous speakers, he found it difficult to understand why Jamaica, a country known for its commitment to the rule of law, had failed to produce a periodic report for 16 years. Many problems could have been avoided by maintaining a proper dialogue during that period. He agreed with Mr. Lallah and Mr. Klein that Jamaica's position on the subject of corporal punishment was totally untenable. As for the delegation's remark that the Covenant should not be seen as a vehicle for indirect penal reform, he believed that that was precisely what the Covenant was designed to do.

40. Mr. Bhagwati and others had already touched on the absence of coroners' reports, which made it impossible to investigate abuses and prosecute the guilty.

41. Referring to paragraph 50 of the report, he said that people, especially from poor neighbourhoods, often seemed to be kept in custody for weeks at a time without being brought before a magistrate. Was there any known case where such a person had brought a successful civil action against the State?

42. Mr. SCHEININ associated himself with the Chairperson's comments on Jamaica's decision to withdraw from the Optional Protocol.

43. The fact that the list of issues did not contain a separate question on the death penalty should not be construed as lack of concern with that issue on the part of the Committee. Questions 7, 9, 10 and 14 were all crucial to whether or not Jamaica's position on the death penalty issue was consistent with the Covenant.

44. The delegation's replies to question 6 relating to article 9 of the Covenant had not proved very convincing, and neither section 15 (3) of the Constitution nor paragraphs 45 and 48 of the report removed the ambiguity persisting with regard to article 9, paragraph 3. The head of the delegation had spoken of suspects being brought before a justice of the peace. Was that done ex officio in every case? And if so, how soon after the person had been taken into custody? Was there a maximum time limit? Did delays occur in practice?

45. Mr. POCAR said that the difficulties so far encountered in the Committee's dialogue with the State party might be partly due to the extremely late submission of the second periodic report. Referring to paragraphs 52 and 53 of the report, he noted that there was a category of prisoners, described as habitual criminals or persons who habitually led a dishonest or criminal life, who were sentenced under section 54 of the Criminal Justice (Administration) Act to preventive detention. He understood that such sentences were handed down by the Supreme Court as a form of punishment and wished to know what charges were brought in such cases. As they were evidently unrelated to the offence with which the accused person would subsequently be charged, he feared that decisions regarding preventive detention might rest on arbitrary grounds. What was the maximum duration of preventive detention and how many detainees were currently in that situation?

46. Ms. GAITAN DE POMBO expressed deep concern at the increased severity of the judicial system, particularly in terms of guarantees of due process and the right of self-defence of detainees and accused persons.

47. She associated herself with the Chairperson's statement of concern and regret regarding Jamaica's decision to withdraw from the Optional Protocol. She was particularly keenly affected as a Latin American and as a national of a country with close ties to the Caribbean, a region whose future would be shaped by its commitment to the defence of human rights and the preservation of the rule of law and democracy.

48. Mr. RATTRAY (Jamaica) said that he had listened with great interest to the Chairperson's statement and the concerns expressed by the Committee regarding the notification by the Government of Jamaica that day of its intention to withdraw from the Optional Protocol. He had taken note of the appeal to use the three-month period prior to the effective date of denunciation to explore the possibility of reconsidering the decision and finding an accommodation and to look for new ways of addressing the situation. His Government had not taken the step in question without great deliberation and what almost amounted to anxiety. It had done so because there appeared to be no alternative if Jamaica was to remain within the framework of its constitutional responsibilities and to respect the decisions taken by its highest courts. He assured the Committee that he would transmit its sentiments and comments to his Government, which would give them due and careful consideration.

49. Several members of the Committee had inquired about the incorporation of international treaties into domestic legislation. Under the prevailing legal system, treaty law did not automatically form part of domestic law. However, domestic measures might be enacted to give effect to the substance of treaties and many existing laws mentioned in the report covered a variety of matters dealt with in the Covenant. The Constitution addressed a very significant proportion of the issues in question, perhaps not in identical terms but certainly in substance.

50. It had been noted that section 24 of the Constitution concerning discrimination made no reference to sexual discrimination. However, section 13 concerning the fundamental rights and freedoms of the individual contained the phrase "whatever his race, place of origin, political opinions, colour, creed or sex". The Constitutional Reform Commission had addressed the matter and recommended that the provisions of section 24 should be amended to expressly provide for the prohibition of discrimination on grounds of sex. A preliminary draft bill regarding the amendment of chapter III of the Constitution gave effect to that recommendation. It stipulated that every person in Jamaica had the right to freedom from discrimination by reason of race, social class, colour, religion, sex or political opinion. In addition, the exceptions referred to in section 24 (8) of the Constitution had been deleted in the draft new version.

51. In reply to the question concerning religious discrimination against Rastifarians in private and State schools, he said that students with

dreadlocks were admitted to all schools. The issue had been raised in an individual case many years previously and the Ministry of Education had ruled in the student's favour.

52. With regard to the former discrimination against Jamaican women who married foreigners in terms of the husband's right to acquire Jamaican nationality, section 7 of the Constitution (Marriage to citizen of Jamaica) had been amended by Act No. 6 of 1993 to ensure that men and women enjoyed the same rights.

53. As to why a women's crisis centre was necessary if Jamaica was a matriarchal society, he said that no general crisis existed but such facilities were provided as protection against emergencies in individual cases. On the whole, women's concerns were high on the agenda in Jamaica.

54. The Vagrancy Act had been repealed many years previously.

55. With regard to the new provisions contemplated for legal aid, there were currently no restrictions in the bill on the scope of such aid, which would be extended, for example, to constitutional motions. Regulations would be drafted to determine eligibility for legal aid, primarily on the basis of a means test. He had listened with concern to the Committee's comments on areas in which deficiencies had existed and gave assurances that due consideration would be given to those matters. The range of legal aid would in future enable persons who had legitimate cause for complaint to enjoy the assistance of counsel.

56. The Constitutional Reform Commission had recommended the establishment of an Office of the Public Defender and a Citizens Protection Bureau and that recommendation had been incorporated in a draft bill. The Public Defender would have the power to receive complaints of breaches of the Constitution and to act as a certifying authority pursuant to any law relating to legal aid.

57. There was no definite term for written judgements but a heated discussion was currently taking place on whether legislation on the matter was appropriate or whether, alternatively, the Chief Justice should establish rules applicable to the judiciary. Under existing guidelines for judges, attention was drawn to the absolute need to hand down judgements within a reasonable period, especially in capital cases.

58. With regard to domestic violence, he assured Lord Colville that the new provisions of the Family Law Act of the United Kingdom would be carefully studied for possible adaptation to Jamaican circumstances.

59. The composition of the Police Complaints Commission was laid down in the first schedule to the Police Complaints Act. It was composed of three persons appointed by the Governor-General and had certainly included laypersons. The categories who were disqualified from serving included members of the Senate or the House of Representatives, candidates for election, police officers and persons convicted of any offence involving dishonesty or moral turpitude. The publication of annual reports for submission to the House of Representatives

was a statutory requirement. In due course he would provide the Committee with copies of the Commission's report and information on the outcome of its proceedings.

60. Mr. PRESCOTT (Jamaica) said that the list issued in March 1997 of items that inmates of condemned cells were allowed to keep in their possession was not necessarily complete and was still open to amendment. It represented an attempt to standardize the basic requirements for inmates and to prevent the accumulation of unnecessary items. A great deal of contraband, including drugs, ratchet knives and improvised weapons, had been found in condemned cells, where a high level of security and safety should be maintained and inmates should be prevented from assaulting each other. Inmates under sentence of death were allowed to correspond with their lawyers and were given special facilities by the prison superintendent for correspondence with and visits from legal advisers, friends and relatives. They were not, however, allowed to keep legal documents, which were filed in the superintendent's office and to which they had access if necessary.

The meeting rose at 6.05 p.m.